

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-114296-08

Date: JUNE 25, 2008

Legend:

Husband =

Wife =

Date 1 =

Trust 1 =

Trust 2 =

Son 1 =

Son 2 =

Attorney =

Law Firm =

a =

Company =

Year 2 =

Date 2 =

Dear _____ :

This is in response to a letter from your authorized representative dated March 24, 2008, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate the generation-skipping transfer (GST) exemptions of Husband and Wife (Taxpayers) to transfers to Trust 1 and Trust 2.

The facts and representations submitted are summarized as follows: On Date 1, Husband established two irrevocable trusts: Trust 1 for the benefit of Son 1 and his lineal descendants, and Trust 2 for the benefit of Son 2 and his lineal descendants. The trust agreements were drafted by Attorney, a partner with Law Firm and an experienced estate planner. During the discussions of the trusts, Attorney advised Taxpayers of the

possible application of the GST tax if distributions were made to grandchildren. Taxpayers agreed to allocate a sufficient amount of their GST exemptions to the transfers to each of the trusts so that each trust would have an inclusion ratio of zero. In addition, each trust agreement states that Taxpayers intend to allocate their GST exemptions to the trust. On Date 1, after executing the trust agreements, Husband transferred a shares of Company stock to each trust.

Taxpayers obtained extensions to file their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns to report the transfers to Trusts 1 and 2 and to split the gifts. At their request, Attorney prepared the Forms 709. Taxpayers relied on Attorney to prepare returns that included the allocation of GST exemption to the transfers to the trusts. The returns were timely filed. Attorney, however, failed to prepare notices of GST allocation for the returns. Thus, neither Taxpayer's GST exemption was allocated to either trust.

In Year 2, while doing additional estate planning for Taxpayers, Attorney discovered the failure to allocate Taxpayers' GST exemptions. On or about Date 2, Attorney met with Taxpayers to discuss the fact that the trusts were not exempt from GST tax and to tell them about the possibility of requesting relief. Attorney helped Taxpayers engage counsel to seek the relief.

Taxpayers have requested an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate their GST exemptions to the Date 1 transfers to Trusts 1 and 2.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under section 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election

includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Pursuant to § 2513, Husband and Wife consented to split the Date 1 gifts. Husband and Wife are treated as the transferors for GST purposes of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. Taxpayers are granted an extension of time of 60 days from the date of this letter to allocate their available GST exemptions to the Date 1 transfers of stock to Trusts 1 and 2, based on the gift tax value of such stock on Date 1.

The allocations should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the Date 1 transfers were made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether Trusts 1 and 2 will have zero inclusion ratios as a result of Taxpayers' allocations of GST exemption to the Date 1 transfers to the trusts.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes

Copy of this letter